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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Ian Lopatin, et al.,

10 Plaintiffs,

11 v.

12 LTF Club Operations Company
13 Incorporated, et al.,

14 Defendants.

No. CV-15-02449-PHX-DGC

ORDER

15 Defendants have filed a motion to transfer this case to the United States District
16 Court for the District of Minnesota. Doc. 6. Plaintiff filed an opposition, and Defendants
17 replied. Docs. 22, 21. For the reasons that follow, the Court will deny the motion.¹

18 **I. Background.**

19 Plaintiffs in this action are Ian Lopatin, an individual residing in Arizona, and At
20 One Yoga, LLC (“AOY”), an Arizona limited liability company that operates in Arizona.
21 Doc. 1-2 (hereinafter *Complaint*), ¶¶ 12-13. The named Defendants are (1) LTF Club
22 Operations Company, Inc. (“LTF Operations”), a Minnesota corporation with its
23 principal place of business in Minnesota, (2) Lifetime Fitness, Inc. (“Lifetime”), a
24 Minnesota corporation with its principal place of business in Minnesota and the parent
25 company of LTF Operations, (3) Bahram Akradi, an individual residing in Minnesota and
26 Lifetime’s Chief Executive Officer, and (4) Joe Hall, an individual residing in Minnesota

27
28 ¹ Defendants’ request for oral argument is denied because the issues have been
fully briefed and oral argument will not aid the Court’s decision. *See* Fed. R. Civ. P.
78(b); *Partridge v. Reich*, 141 F.3d 920, 926 (9th Cir. 1998).

1 and Life Time's Vice President of National Club Operations. *Id.*, ¶¶ 5, 14-17, 30. Ten
2 unknown persons are also listed as defendants. *Id.*, ¶ 18.

3 Plaintiff Lopatin is the founder of AOY, a Scottsdale area yoga studio. *Id.*, ¶ 2.
4 Six years ago, AOY was generating substantial revenue and achieving a significant profit
5 margin due in large part to its proprietary system for training and certifying yoga
6 instructors (the "Certification Program"). *Id.*, ¶¶ 2-3. AOY's success came at the
7 expense of its competitors, including "Life Power Yoga," a Scottsdale area studio owned
8 by LTF Operations. *Id.*, ¶ 4. In February 2010, Defendant Akradi approached Lopatin,
9 in Scottsdale, about purchasing AOY. Doc. 20-1 at 2, ¶ 3. The two met several times in
10 Arizona to negotiate the purchase, reaching an agreement on July 6, 2010. *Id.* Under the
11 Agreement, Life Time purchased AOY and the right to use the Certification Program.
12 *Id.*, ¶ 5. Life Time made a small upfront payment to Lopatin, and agreed to make
13 deferred payments for the next five years based on the profitability of the Certification
14 Program. *Id.*, ¶ 5. It promised to use "commercially reasonable efforts" to "develop,
15 grow, and implement" the Program. *Id.*, ¶ 7.

16 Plaintiffs allege that Life Time has not delivered on its promise to invest in the
17 Program. In fact, the Program's success since the sale has been so meager that Plaintiffs
18 now suspect that Life Time's actual purpose was not to obtain the Certification Program,
19 but to eliminate AOY so that Life Power Yoga could monopolize the Scottsdale yoga
20 market. *Id.*, ¶ 9. Plaintiffs seek to recover the deferred payments that never materialized,
21 asserting claims for breach of contract, breach of the implied covenant of good faith and
22 fair dealing, fraudulent inducement, civil conspiracy, and unfair competition in violation
23 of A.R.S. § 44-1402.

24 **II. Legal Standard.**

25 28 U.S.C. § 1404(a) provides: "For the convenience of parties and witnesses, in
26 the interest of justice, a district court may transfer any civil action to any other district or
27 division where it might have been brought or to any district or division to which all
28 parties have consented." The Court adjudicates motions to transfer under this provision

“according to an individualized, case-by-case consideration of convenience and fairness.” *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th Cir. 2000) (quotation marks omitted). The *Jones* Court enumerated eight non-exclusive factors that are relevant to this determination:

(1) the location where the relevant agreements were negotiated and executed; (2) the state that is most familiar with the governing law; (3) the plaintiff’s choice of forum; (4) the respective parties’ contacts with the forum; (5) the contacts relating to the plaintiff’s cause of action in the chosen forum; (6) the differences in the costs of litigation in the two forums; (7) the availability of compulsory process to compel attendance of unwilling non-party witnesses; and (8) the ease of access to sources of proof.

Id. at 498-99. The movant has the burden of showing that transfer is appropriate, *see Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 255-256 (1981), and “must make a strong showing of inconvenience to warrant upsetting the plaintiff’s choice of forum,” *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 843 (9th Cir. 1986).

III. Analysis.

Because all Defendants are residents of Minnesota, this action could have been brought in Minnesota, 28 U.S.C. § 1391(b)(1), and could be transferred there if such transfer would serve “the interest of justice,” 28 U.S.C. § 1404(a).² But a review of the relevant factors shows that transfer would not serve the interest of justice.

The first factor favors Arizona. Plaintiff Lopatin avers that Defendant Akradi approached him in Arizona about purchasing AOY and that the two met in Arizona several times to negotiate the Agreement. Doc. 20-1 at 2, ¶ 3. Akradi admits that he attended these meetings. Doc. 7 at 19, ¶ 14. Although Defendants aver that Akradi and his staff worked on the negotiation from Lifetime’s headquarters in Minnesota (Doc. 7 at 19, ¶ 16, *id.* at 24, ¶ 9), that is of limited relevance because this work was undertaken unilaterally, without Lopatin present. Indeed, Lopatin avers that he only went to Minnesota twice, after the deal was closed. Doc. 20-1 at 2, ¶ 3.

² Plaintiffs allege that Defendants LTF Operations and Lifetime are Minnesota corporations with their principal places of business in Minnesota. Doc. 1-2 at 6.

1 The second factor favors Arizona. The Agreement is governed by Delaware law,
2 which both this Court and the Minnesota court could apply. As Plaintiffs aptly note, “[i]t
3 would be difficult to find a single district in the federal court system that has not
4 interpreted Delaware contract law.” Doc. 20 at 7. Plaintiffs also assert a claim under
5 A.R.S. § 44-1402, which this Court is best equipped to decide. Defendants argue that the
6 Court’s familiarity with this provision is likely to be of little relevance because the claim
7 is likely time-barred. Doc. 21 at 6. But if Defendants intend to assert a statute of
8 limitations defense, that actually militates against transfer. Arizona’s discovery rule
9 ensures that applying the State’s statute of limitations is no mechanical task. This Court
10 frequently decides cases involving Arizona’s discovery rule and is best equipped to
11 decide any limitations issues that arise in this case.

12 The third factor favors Arizona. Courts do not lightly disturb a plaintiff’s choice
13 of forum, particularly where, as here, the “forum chosen is not only the plaintiff’s
14 domicile but also has a significant connection with the subject matter of the case.” *L.A.*
15 *Mem’l Coliseum v. Nat’l Football League*, 89 F.R.D. 497, 499-500 (C.D. Cal. 1981).

16 The fourth factor favors Arizona. Plaintiff Lopatin is a resident of Arizona and
17 AOY is an Arizona limited liability corporation. Doc. 20-1 at 2, ¶ 3. Defendants also
18 have significant ties to Arizona. Defendant Life Time Fitness, Inc. has five locations in
19 Arizona. Doc. 20-2 at 2, ¶ 4. Defendant Akradi owns a home in Arizona. Doc. 7 at 19,
20 ¶ 15. By contrast, Lopatin does not have significant ties to Minnesota. Doc. 20-1 at 2.

21 The fifth factor favors Arizona. The dispute in this case arises out of Defendants’
22 contacts with Arizona – specifically, whether Defendants breached an agreement to
23 purchase an Arizona business in an unlawful effort to monopolize the Scottsdale yoga
24 market. *See Complaint*, ¶¶ 1, 4-5, 9. By contrast, Plaintiffs have no significant contacts
25 with Minnesota, and, aside from the fact that Defendants reside there, Minnesota has no
26 connection to the subject matter of this case.

27 The sixth factor favors Minnesota. Plaintiffs do not identify any Arizona-based
28 witnesses other than Lopatin whom they intend to call at trial. By contrast, Defendant

1 Hall avers that there are thirteen current Life Time employees (including himself) and
2 three former Life Time employees whom he expects to testify. Doc. 21 at 15-16, ¶¶ 7-9.
3 Lopatin avers that he has “never heard of or dealt with the majority of the Life Time
4 employees listed in Joe Hall’s declaration,” and that he did not have any significant
5 contacts with any of the former employees listed in the declaration. Doc. 20-1 at 3, ¶ 5.
6 That would be more persuasive if it were not for the fact that Plaintiffs list ten unknown
7 persons as Defendants in their fraudulent inducement, unfair competition, and civil
8 conspiracy counts. *Complaint*, ¶¶ 18-19. Because Plaintiffs have listed these unknown
9 persons, several Life Time employees may have to testify if the case goes to trial.

10 The seventh factor is neutral. Neither side identifies any unwilling nonparty
11 witnesses they intend to subpoena. *See* Doc. 21 at 9 (acknowledging that all Life Time
12 employees “will voluntarily testify”).

13 The eighth factor is also neutral. Defendants argue that this factor favors
14 Minnesota because the Defendant companies keep their records there. Doc. 21 at 10.
15 But that consideration is less relevant in a day of electronic record keeping. Defendants
16 do not identify any barrier to electronic production; indeed, it appears they have already
17 electronically produced over 500 documents. Doc. 20-2, ¶ 8.

18 Defendants argue that one additional factor militates in favor of transfer: relative
19 court congestion. But “[r]elative court congestion is at best, a minor factor in the section
20 1404 calculus.” *Royal Queentex Enterprises v. Sara Lee Corp.*, No. C-99-4787 MJJ,
21 2000 WL 246599, at *8 (N.D. Cal. Mar. 1, 2000). That is particularly so where, as here,
22 the expected time to trial is only a few months shorter in the proposed transferee forum:
23 the median time to trial in the District of Arizona is 27.1 months, as compared to 24.4
24 months in the District of Minnesota. *See* Doc. 20-8. The Court also fully expects to get
25 this case to trial in less than 27 months.

26 Of the nine factors considered, five favor Arizona, one favors Minnesota, and
27 three are neutral. Defendants have not made the strong showing required for transfer
28 under § 1404(a).

Dated this 3rd day of February, 2016.

David G. Campbell

David G. Campbell
United States District Judge